is fairly apportioned to reflect the degree of activity that occurs within the State; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to the services provided by the State. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). *See also Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564, 587 (1997) (taxes motivated by economic protectionism and discrimination against interstate commerce are unconstitutional.) Judicial application of this four-prong test, of which non-discrimination is only one element, rests not on the formal language of a particular tax statute but rather its practical effect, signaling judicial deference to legislative authority in economic matters.[6] *Complete Auto*, 430 U.S. at 279.

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[6] Some legal scholars argue that the distinction between non-discriminatory and discriminatory tax policies under the "negative" Commerce Clause no longer makes doctrinal sense because all tax policies influence economic behaviors, negating the principled notion of tax-neutral decision-making. Edward A. Zelinsky, *Restoring Politics to the Commerce Clause: The Case for Abandoning the Dormant Commerce Clause Prohibition on Discriminatory Taxation*, 29 Ohio N.U.L. Rev. 29, 31-32 (2002). Jettisoning *Complete Auto's* nondiscrimination prong would align Commerce Clause jurisprudence within the economic framework that our dynamic national economy is a composition of interconnected LERs. It would not terminate judicial review of state tax policies under the Commerce Clause because the three remaining prongs remain as "judicially-imposed limitations on states' ability to tax interstate commerce." *Id.* at 83. Additionally, advocates of ending the nondiscrimination prong argue that its abandonment would invite "congressional (rather than judicial) determination of the boundaries of that taxation," not "unfettered taxation by the states." *Id.* at 86. "Indeed, even with the courts available as venues for relief, those claiming to be harmed by state tax policies frequently obtain the succor they desire legislatively...." *Id.* at 84.

In this matter, the City offered the ITC for the legitimate local purpose of strengthening its economy, which would generate additional jobs and tax revenue that, but for the plant expansion investment by DaimlerChrysler, would not happen.[7]

Since LERs comprise the nation's economy, and the benefits and burdens on one affect all, then the discriminatory threat from location-based tax incentives applied by state and local governments through their powers to tax appears hollow.

B. Claims of economic discrimination from location-based tax incentives under the Commerce Clause are not sustainable.

This Court has overturned certain state tax policies that benefit in-state economic activity while imposing an unequal burden on out-of-state activity. *New Energy* 486 U.S. at 269 (1988). *See e.g., Boston Stock Exchange v. State Tax Commission,* 429 U.S. 318, 336-337 (1977) (competition among the states for interstate commerce is central to the nation's free-trade policy, but a state may not tax interstate transactions so as to favor local businesses over out-of-state business); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 272 (1984) (states may not build up their domestic commerce by means of unequal and oppressive burdens upon industry and

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[7] Jobs in the automotive industry are "highly paid that offer pensions and healthcare. The average wage of an auto assembly worker is $69,500 annually. Moreover, because these jobs are highly paid, their impact on a state's economy is even more dramatic. In fact, for every auto assembly job created, 7.5 more jobs are created in the economy." UAW Brief, *supra* note 4 at 6-7, *citing* Kim Hill & Emilio Brahmst, Center for Automotive Research, *The Auto Industry Moving South: An Examination of Trends* at 7 (2003) (publication available at http://www.cargroup.org/pdfs/North-SouthPaper.PDF.)

business of other states); *Westinghouse Electric Corp., v. Tully*, 466 U.S. 388, 404 (1984) (the State cannot circumvent Commerce Clause prohibitions against burdensome taxes on out-of-state transactions with a tax levied in the aggregate rather than on individual transactions.) The decisions teach that "in the process of competition no State may discriminatorily tax the products manufactured or the business operations performed in any other State." *Westinghouse* 466 U.S. at 401, 405-407, n.12 (1984).

Neither circumstance applies in the case of Ohio's ITC. The Ohio ITC is available to any qualifying corporate taxpayer, including those that decide to make economic development investments in specific "economically-depressed" areas. *See* Ohio Rev. Code Ann. § 5733.33(C)(2), (A)(8)-(13). The Ohio ITC does not burden out-of-state competitors, because without a physical presence in Ohio, those competitors do not pay the state's franchise tax. Ironically, by overturning the Ohio ITC because of the *theoretical* harm to out-of-state interests, the Sixth Circuit's decision *actually* burdens Toledo by limiting the City's ability to help generate new jobs and tax revenues.

This Court's holdings disfavor the use of coercive ITCs that negate tax-neutral decision-making, but they do not forbid competition for interstate commerce. It is actual discrimination, not the potential for it that "transgresses constitutional commands." *Assoc. Industry of Missouri, v. Lohman*, 511 U.S. 641, 654 (1994). A facially discriminatory tax that imposes on interstate commerce an equivalent tax burden already borne by intrastate commerce does not offend the negative Commerce Clause. *Id.* at 647. *Cf. Maryland v. Louisiana*, 451 U.S. 725, 756 (1981) ("The Louisiana First-use Tax unquestionably discriminates against interstate commerce in favor of local interests as the necessary result of various tax credit exclusions.)

Coercive state incentives are ones that induce involuntary action with the intent to manipulate economic decisions to create in-state economic growth at the expense of economic growth outside the state. *Oregon Waste Sys. Inc. v. Department of Environmental Quality*, 511 U.S. 93, 99 (1994) ("Discrimination simply means differential treatment of in-state and out-of-state economic interests that benefit the former and burdens the latter.) Alternatively, if the state's ITC encourages in-state expansion, in-state competitors that choose not to expand retain their political power to petition the Ohio government to end the ITC's discriminatory impact. *Minnesota v. Clover Leaf Creamery, Co.*, 449 U.S. 456, 473, n.17 (1981).

The Sixth Circuit's decision, which accepted Respondents' argument against location-based ITCs but rejected the argument against direct subsidies, reasoned that direct subsidies are disconnected from a state's regulation of interstate commerce because neither location nor the state's power to tax is a determining factor in the grant of a subsidy:

> "Although the defendants liken the investment tax credit to a direct subsidy, which would no doubt have the same economic effect, the Court has intimated that attempts to create location incentives through the state's power to tax are to be treated differently from direct subsidies despite their similarity in terms of end-result economic impact ... Thus the distinction between a subsidy and tax credit, in the constitutional sense, results from the fact that the tax credit involves state regulation of interstate commerce through its power to tax." (Emphasis in original.)

Cuno et al., v. DaimlerChrysler Corp., et al., 386 F3d 738, 746 (6th Cir. 2004), *rehearing en banc denied* (Jan 18, 2005).

This is a distinction without a difference. Both taxes and subsidies are different *means* to accomplish the same end, which is generally to shape markets and protect in-state interests. In this case, the Ohio ITC does not hinder trade, nor is it an unconstitutional barrier to interstate commerce. Factors like transportation infrastructure, proximity to consumers and suppliers, and workforce quality and quantity, are more influential in business location decisions than the composition of an economic development incentive and subsidies package when the choice is between distinct LERs.[8] The legal argument against coercive incentives has outlived its useful application because the Commerce Clause has helped create a robust national economy comprised of interconnected LERs.[9]

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[8] Rachel Weber, Negotiating the Ideal Deal (Feb. 13, 2004) (unpublished paper available online at <http://www.hhh.umn.edu/img/assets/6158/weber_paper.pdf) (Last visited on July 18, 2005.) Alternatively, the practical influence of incentive packages increases once a business selects a particular region in which to locate. Generally, if State A negotiates a new investment tax credit or subsidy for Company A, this does not preclude Company B, located either in-state or out-of-state, from either seeking the same terms from State A, or negotiating with State B for a similar tax incentive or subsidy package. If State B does not match State A's package, the decision is probably an economic or legislative one.

[9] If, as some commentators argue, location-based discrimination is a key feature of a coercive, discriminatory tax, virtually all state and local spending and tax provisions (*e.g.*, property tax abatement, corporate income tax rates) are at risk of Commerce Clause challenge because they affect "those present in the state to the exclusion of those outside." Zelinsky, *supra* note 6, at 31. The argument by opponents of location-based incentives that such incentives tilt the economic playing field either in favor of in-state activity or against out-of-state activity is but a pretext for their

II. FEDERALISM ASSIGNS TO THIS COURT THE RESPONSIBILITY FOR SETTING THE APPROPRIATE BOUNDS OF AUTHORITY.

The Sixth Circuit's decision regarding the Ohio ITC creates imbalance that risks economic innovation and experimentation at the state and local level.

A. Applying the wrong analytical framework, which led the Sixth Circuit to perceive and describe economies incorrectly, inevitably harms the laboratories of democracy.

The mesmerizing power of the "economy as nation" perspective hurts American politics and democracy because this nationalist view sets up false choices between local and national interests, grouping the former with other "special interests" and treating the latter as somehow the sole locus of the general good.[10]

In its infancy, the Nation's economy was a loose confederation of independent state economies. Many generations later, the evidence proves that the Nation's economy is a dynamic, linked system of local economic regions unbounded by the political jurisdiction of any governmental unit.[11]

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fundamental argument that ending location-based incentives will save the states from themselves and "slow the race to the bottom" in cutting business taxes to attract jobs. Peter D. Enrich "Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business," 110 Harv. L Rev. 377, 400 (1996).

[10] Barnes & Ledebur, *supra* note 2, at 3.

[11] *Id.* at 20, 63, and 71. The federal government adopts this concept in its definitions of metropolitan and "micropolitan" areas. U.S. Census Bureau, Guide to the 2002 Economic Census, (last visited July 18, 2005)

Interconnectedness means that a significant economic change in any one LER reverberates among the others.[12] If

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< http://www.census.gov/econ/census02/guide/g02geo2.htm >. Defined by the U.S. Office of Management and Budget, a metropolitan area is one with "at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core...." *Id.* A "micropolitan" area differs only in size. Its population criteria include "at least one urban cluster of at least 10,000 but less than 50,000 population." *Id.* Metropolitan and micropolitan areas together include about 93 percent of the U.S. population – about 83 percent in metropolitan areas and about 10 percent in micropolitan areas. *Id.*

Populating those areas are local businesses of all sizes, including multinational corporations that are responsible to shareholders or private interests, but generally not to a particular political or geographic jurisdiction. "The complex interrelationship of suppliers, producers and supporters in industrial development is focusing attention on economic clusters as the basis of economic development. Industrial clusters, not isolated companies, are the basis of economic growth in an area. As a consequence, especially for geographically large countries, the nation state is not an integrated center of economic growth. Rather, the sub-regions within the nation state are the dynamic economic clusters, which ... make up the economy of the nation." William F. Miller, What Part Will America Play in the Growth of the World Economy? An Introduction to the Industrial Policy Symposium, 5 Stan. L. &Pol'y Rev 11, 12 (1993).

[12] Central cities and suburban jurisdictions within local economic regions, as a proxy for LER interconnectedness, are not mutually exclusive, but rather parts of the larger economic whole. Barnes & Ledebur, *supra* note 2, at 40. A 1993 National League of Cities study of 78 metropolitan areas found that the "economic fates and futures of cities and suburbs are inextricably intertwined." National League of Cities, "All In It Together": Cities, Suburbs and Local Economic Regions, 4 (1993). For every dollar increase in central city income, suburban income increased by $1.12, and vice versa, according to the study of economic data between 1979 and 1989 for those metropolitan areas. *Id.* The data scattergram prepared by

the Nation's economy is its collection of LERs, and healthy LERs equate with a connected national economy, then the economic development benefits (or, "effects") from an expanded auto plant in Toledo, Ohio, stimulated by ITCs would flow beyond the City's limits. The economic effects would not pool within Toledo, but rather spill into the surrounding county, throughout Ohio and seep into neighboring states like Michigan, Kentucky, Pennsylvania and Indiana, where steel and auto parts are made, and outward to auto dealerships and consumers throughout the nation. The economic health of one LER affects them all.

Dynamic advances in economic knowledge, like in medicine, have led to a new understanding of economic systems.[13] The diagnosis that ITCs are a discriminatory violation of the "negative" Commerce Clause belies a fundamental misunderstanding of the anatomy of an interdependent economy. Absent incontrovertible evidence that ITCs are the deciding influence in a firm's location

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Barnes and Ledebur presents a clear cluster pattern, with a percentage of variation calculated at 82 percent, which demonstrates a sharp and distinct relationship between central city and suburban income. *Id.* "Central cities and their suburbs are clearly 'joined at the hip' in the structure and functioning of interrelated economic activities, stretching from the older downtown central business districts to the new 'edge-city' suburban office and retail centers and from inner city manufacturing plants to suburban industrial parts." Henry G. Cisneros, (*ed.*) Interwoven Destinies: Cities and the Nation, at 24 (1993). *See also* Anthony Downs, New Visions for Metropolitan America, 58 (1994) ("[n]o jurisdiction is an island. Every suburb is linked to its central city and to other suburbs.")

[13] While geographic boundaries or constructs of government do not contain the real national economy, the "powers of a strong central government, along with shared history and culture" do help create a "national economic entity." Barnes & Ledebur, *supra* note 2, at 3.

decision, it does not follow that location-based incentives *de facto* discriminate against interstate commerce. If ITCs do not discriminate, then their use by state and local governments does not rise to a constitutional question.

Rather, the use of location incentives like ITCs is a public policy question for which the arbiter should be the legislative branch and, ultimately, the electorate.

B. Legislative protections exist to correct incidents where certain location-based incentives may discriminate against interstate commerce.

States and local governments strive to negotiate economic development incentive packages that protect the interests of their communities. Semantics may term this "discrimination." However, to accept the Sixth Circuit's opinion that location-based tax incentives are discriminatory essentially throws out the economic development baby with the bathwater.

The Sixth Circuit's decision infers the underlying concern for opponents is that economic development incentives are *inefficient*. Therefore, the substantive issue for debate is the *effectiveness* of ITCs. That is a question of economics and public policy, not a question of law.[14]

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[14] Opponents of state and local authority to negotiate economic development incentive packages have initiated a judicial strategy due to apparent frustration over their inability to stop allegedly inequitable economic development deals through the legislative process. *See* Peter D. Enrich, Business Tax Incentives: A Status Report, 34 Urb. Law 415, 428 (2002) ("Nonetheless, the suits do have the potential to take out of the hands of state and local officials some of the most pervasive and pernicious tools of interstate economic rivalry, while raising cautionary doubts about many others. If litigation can also serve to raise public awareness of the high costs and negative consequences of the unconstrained use of business tax breaks, then it promises to be a powerful strategy for combating subsidy abuse.")

Opponents argue that the use of incentives amounts to government providing "corporate welfare."[15] They claim that state and local incentive packages erode corporate income tax collection, which impairs the ability of government "to finance high-quality public services and infrastructure."[16] Not convinced by their own rhetoric, however, opponents argue in the alternative "the *Cuno* decision... leaves state and local governments free to *encourage and subsidize economic development and business location* with direct assistance programs."[17]

Discrimination is the shield behind which hides the opponents' true argument that investment tools like ITCs are an inefficient allocation of scarce public resources.[18] Ironically, re-routing economic decisions around legislatures and through the courts would create overwhelming financial and administrative burdens on the courts. It would demand that the courts apply scrutiny to the efficacy of economic plans and decisions, requiring courts to substitute their predictive judgments for those of elected legislatures and

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[15] Enrich, *supra* note 12 at 425 (Enrich writes, "perhaps growing public concern about 'corporate welfare' will gradually erode policy makers' enthusiasm for business tax breaks....")

[16] Michael Mazerov, Should Congress Authorize States to Congress Continue Giving Tax Breaks to Business? (revised June 30, 2005) (report at 9, available at http://www.cbp.org/2-18-05sfp.pdf)

[17] *Id.* at 8. (Emphasis added.)

[18] If inefficient allocation of scarce public resources is indeed the crux of the opposition to ITCs, it is curious that opponents would so readily concede that upholding the *Cuno* decision does not prevent state and local governments from reallocating the same amount of tax revenue from ITCs to direct subsidies, a different means that produces the same ends.

professional agencies. *See Lingle v. Chevron U.S.A., Inc.*, 125 S.Ct. 2074, 2085 (2005).

Assuming, arguendo, that investment tax credits provided by legislatures are "corporate welfare," *accountability* and *transparency* checks to prevent abuse already exist:

1. **Economic Development Planning.** Officials in municipalities and regions often evaluate their community's given competitive advantages and design economic development plans that build upon them. These competitive advantages include geography (*e.g.*, Chicago's accessibility within two-hours by air anywhere in the continental United States), natural resources (*e.g.*, natural deep harbor in Long Beach, California), and human capital (*e.g.*, academic institutions in the greater Boston-Cambridge region produce an educated workforce). Municipal officials that adhere to an economic development roadmap are less inclined to offer incentives to businesses that do not help the community arrive at its desired economic destination. The state of Minnesota, for instance, requires municipalities and state agencies to develop explicit benchmarks for awarding subsidies, including firm standards for job creation and wages.[19]

2. **Negotiations.** States and municipalities do not have the power to compel a business to locate or remain in their jurisdiction, but they do have the power to persuade through negotiations. The law of contracts is a powerful sword and shield for states and municipalities when negotiating

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[19] *See* Weber, *supra* note 8 (unpublished paper at 4).

economic incentive packages.[20] Rather than continue a "gift-horse" practice of providing economic incentives, contracts, state statutes and municipal ordinances can capture the quid pro quo nature of public incentives and subsidies by linking the incentive offered to the public objective required like job creation and tax revenue generation.[21] City councils and state legislatures across the nation like in Burlington, Vermont, New Haven, Connecticut, Austin, Texas, and the State of Ohio, have enacted accountability statutes and ordinances that, for instance, direct the recapture of abated taxes if the recipient company reneges on its commitments.[22] Municipalities and states also negotiate incentive packages that provide no public assistance until the recipient

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[20] Rachel Weber, Why Local Economic Development Incentives Don't Create Jobs: The Role of Corporate Governance, 32 Urb. Law. 97, 106 (1998).

[21] *Id.* at 116.

[22] *Id.* at 117-118. Non-performance measures by states and municipalities generally fall into five categories: (1) Rescission (*e.g.*, canceling a subsidy agreement if job and revenue projections are not met); (2) Clawbacks (*e.g.*, recovering all or part of subsidy's cost if performance goals are not met); (3) Penalties (*e.g.*, adding charges like accrued interest on the public investment granted for non-performance or relocation by the recipient company); (4) Recalibrations (*e.g.*, adjusting public subsidies to reflect changed business climate); and, (5) Debarment (*e.g.*, excluding a firm from future contracts with a municipal government or state for non-performance.) *See also* Grassroots Policy Project, Public Subsidies, Public Accountability: Holding Corporations to Labor and Community Standards, (1998) (state-by-state summary of accountability provisions).

company accomplishes its contractual objectives.[23] With legislative authority comes the responsibility to use economic development tools prudently.

3. **Public scrutiny.** By their public nature, economic incentive packages are transparent. A community-based movement for corporate accountability has emerged over the past decade to monitor economic development deals and expose incidents of subsidy abuse.[24] Petition drives, media scrutiny, and local ballot referenda to approve or reject economic incentive packages are tools available to raise public awareness of deal terms, which may shame companies and the local governments into behavior that conforms to the will of the electorate.[25]

4. **Ballot box.** The ultimate check on the inappropriate use of economic incentive packages is the electorate. Voters that object to decisions made by elected officials have the power to assemble a majority to remove those officials from office and replace them with new leaders.

CONCLUSION

The fundamental question at issue is whether the legislative or judicial branch shall direct the use of economic development tools like investment tax credits. The Constitution grants deference to the Congress over interstate commerce. Therefore, if Ohio's ITC discriminates against interstate commerce, then the Congress, not the courts,

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[23] *See* Weber, *supra* note 9 (unpublished paper at 5).

[24] *Id.* at 9.

[25] *Id.*

should set the boundaries on state and local government use of economic tools as incentives to strengthen local economies.

A grant of certiorari for Petitioners (together with DaimlerChrysler's petition, No. 04-1407, which *amici* support, as well) gives this Court the opportunity to declare the Commerce Clause a success because it has accomplished the Founders' objective to knit together a collection of local economic regions into a national economic commons. Judicial efforts to rein in the authority of state and local governments within LERs to use investment tax credits would stifle the Nation's economy and chip away the authority of legislatures to grow their economies.

Alternatively, by not granting certiorari, the Court would uphold an outdated analytical framework of the national economy that is no longer sustainable since the nation's economy is its collection of LERs.

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04-1704 & 04-1724

IN THE

Supreme Court of the United States

DAIMLERCHRYSLER CORPORATION,
Petitioner,

v.

CHARLOTTE CUNO, ET AL.,
Respondents.

WILLIAM W. WILKINS, TAX COMMISSIONER, ET AL.,
Petitioners,

v.

CHARLOTTE CUNO, ET AL.,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

JOINT APPENDIX

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TABLE OF CONTENTS

PAGE

Relevant Docket Entries in U.S. Court of Appeals for the Sixth Circuit, No. 01-3960, *Cuno v. DaimlerChrysler Corp.* 1a

Relevant Docket Entries in the U.S. District Court for the Northern District of Ohio, No. 00-7247, *Cuno v. DaimlerChrysler Corp.* 6a

Complaint for Declaratory and Injunctive Relief, Court of Common Pleas of Lucas County, Ohio, *Cuno v. DaimlerChrysler Corp.*, (Mar. 28, 2000) 14a

Exhibit A to Complaint for Declaratory and Injunctive Relief, Agreement For The Development Of Stickney Assembly Plant 32a

Memorandum Opinion on Remand, *Cuno v. DaimlerChrysler Corp.*, (N.D. Ohio Nov. 11, 2000) 72a

Judgment on Remand, *Cuno v. DaimlerChrysler Corp.*, (N.D. Ohio Nov. 11, 2000) 81a

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari of DaimlerChrysler Corporation in *DaimlerChrysler Corp. v. Cuno*, No. 04-1704:

Memorandum Opinion of the United States District Court for the Northern District of Ohio, (Aug. 1, 2001) 18a

Opinion of the United States Court of Appeals for the Sixth Circuit, (Oct. 19, 2004) 1a

Order of the United States Court of Appeals for the Sixth Circuit, denying petitions for rehearing, (Jan. 18, 2005) 31a

Relevant Docket Entries in the U.S. Court of Appeals for the Sixth Circuit, Case No. 01-3960,
Cuno, et al. v. DaimlerChrysler, Inc., et al.

9/12/01	Civil Case Docketed. Notice filed by T. Lodge and P. Enrich for Appellants Charlotte Cuno, et al. Transcript needed: n (There are 18 plaintiffs listed in the noa. Complete list of names can be found in the office file) □ (bb)
	* * *
11/9/01	PROOF BRIEF filed by Terry J. Lodge for Appellant Charlotte Cuno. Certificate of service date 11/5/01. Number of Pages: 59. [01-3960] □ (vf)
	* * *
12/6/01	PROOF BRIEF filed by Robert C. Maier for Appellee State of Ohio, Appellee C. Lee Johnson, Appellee Thomas M. Zaino, Appellee Joseph T. Deters, Sharon A. Jennings for Appellee State of Ohio, Appellee C. Lee Johnson, Appellee Thomas M. Zaino, Appellee Joseph T. Deters, Samuel J. Nugent for Appellee City of Toledo, Appellee Carleton S. Finkbeiner, Barbara E. Herring for Appellee City of Toledo, Appellee Carleton S. Finkbeiner, Truman A. Greenwood for Appellee Washington Local, Appellee Toledo Pub School, Theodore M. Rowen for Appellee Washington Local, Appellee Toledo Pub School. Certificate of service date 12/5/01. Number of Pages: 55. [01-3960] □ (vf)
	* * *

12/6/01	PROOF BRIEF filed by Charles A. Rothfeld, Albin Bauer, and John T. Landwehr for Appellee DaimlerChrysler, Inc. Certificate of service date 12/5/01. Number of Pages: 53. [01-3960] □ (vf)
	* * *
12/21/01	PROOF REPLY BRIEF filed by Terry J. Lodge for Appellant Charlotte Cuno. Certificate of service date 12/19/01. Final reply brief due 1/24/02 . [01-3960] (vf)
	* * *
2/4/03	CAUSE ARGUED on 2/4/03 by Peter D. Enrich for Appellant Charlotte Cuno, Charles A. Rothfeld for Appellee DaimlerChrysler, Inc, Sharon A. Jennings for Appellee Joseph T. Deters, Appellee Thomas M. Zaino, Appellee C. Lee Johnson, Appellee OH before Judges Siler, Daughtrey, Cole. [01-3960] (me)
9/2/04	OPINION filed: AFFIRMED in part and REVERSED in part [01-3960], decision for publication pursuant to local rule 206 [01-3960]. Eugene E. Siler, Circuit Judge, Martha C. Daughtrey, Authoring Circuit Judge, R. G. Cole, Circuit Judge. (bb)
9/2/04	JUDGMENT: AFFIRMED in part and REVERSED in part. (bb)
9/16/04	PETITION for en banc rehearing filed by Theodore M. Rowen for Appellees Toledo Pub School, Washington Local, Samuel J. Nugent for Appellees Carleton S. Finkbeiner, City of Toledo. Certificate of service date 9/16/04. [01-3960] (blh)
	* * *

9/16/04	ADDITIONAL PETITION for en banc rehearing filed by Douglas R. Cole for Appellees Joseph T. Deters, Thomas M. Zaino, C. Lee Johnson, OH. Certificate of service date 9/16/04. [01-3960] (blh)
9/16/04	ADDITIONAL PETITION for en banc rehearing filed by Charles A. Rothfeld for Appellee DaimlerChrysler, Inc. Certificate of service date 9/16/04. [01-3960] (blh)
	* * *
10/19/04	AMENDED OPINION filed: AFFIRMED in part and REVERSED in part. REVERSED that portion of the district court's judgment upholding as constitutional the investment tax credit provision of Ohio Rev. Code Ann. § 5733.33, and enjoin its enforcement. AFFIRMED the remaining portions of the district court's judgment [01-3960], decision for publication pursuant to local rule 206 [01-3960] . Eugene E. Siler, Circuit Judge, Martha C. Daughtrey, Authoring Judge, R. G. Cole, Circuit Judge. (bb)
10/19/04	JUDGMENT: AFFIRMED in part and REVERSED in part . (bb)
	* * *
10/29/04	MEMORANDUM OF LAW filed in support of their petition for rehearing en banc. Filed by Douglas R. Cole for Appellees Joseph T. Deters, Thomas M. Zaino, C. Lee Johnson, OH. Certificate of service date 10/29/04. [01-3960] (blh)

10/29/04	MEMORANDUM OF LAW in support of their petition for rehearing en banc. Filed by Samuel J. Nugent for Appellees Carleton S. Finkbeiner, City of Toledo. Certificate of service date 10/29/04. [01-3960] (blh)
11/2/04	MEMORANDUM OF LAW in support of its petition for rehearing en banc. Filed by Charles A. Rothfeld for Appellee Daimler-Chrysler, Inc. Certificate of service date 11/2/04. [01-3960] (blh)
	* * *
11/18/04	RESPONSE to the petitions for en banc rehearing [3023966-1] filed by Theodore M. Rowen and Samuel J. Nugent, [3024088-1] Douglas R. Cole, [3024093-1] and Charles A. Rothfeld. Response filed by Terry J. Lodge for Appellant Charlotte Cuno. Certificate of service date 11/17/04. [01-3960] (blh)
1/18/05	ORDER filed denying petitions for en banc rehearing [3023966-1] filed by Theodore M. Rowen and Samuel J. Nugent [3024088-1] filed by Douglas R. Cole, and [3024093-1] filed by Charles A. Rothfeld [01-3960]. Eugene E. Siler, Martha C. Daughtrey, R. G. Cole, Circuit Judges. (blh)
1/24/05	Appellee MOTION filed to stay mandate pending certiorari. Motion filed by Douglas R. Cole for Appellee Joseph T. Deters, Appellee Joseph T. Deters, Appellee Thomas M. Zaino, Appellee Thomas M. Zaino, Appellee C. Lee Johnson, Appellee C. Lee Johnson, Appellee OH, Appellee OH. Certificate of service date 1/24/05. [01-3960] (nb)

1/25/05	Appellee MOTION filed to stay mandate pending certiorari. Motion filed by Theodore M. Rowen for Appellee Toledo Pub School, Appellee Washington Local, Samuel J. Nugent for Appellee Carleton S. Finkbeiner, Appellee City of Toledo. Certificate of service date 1/25/05 . [01-3960] (nb)
1/25/05	Appellee MOTION filed to stay mandate pending certiorari. Motion filed by Charles A. Rothfeld for Appellee DaimlerChrysler, Inc. Certificate of service date 1/25/05. [01-3960] (nb)
1/31/05	ORDER filed granting motion to stay mandate to allow time to file a petition for a writ of certiorari, and thereafter until the Supreme Court disposes of the case. [01-3960] . . Eugene E. Siler, Circuit Judge, Martha C. Daughtrey, Circuit Judge, R. G. Cole, Circuit Judge. (nb)

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Relevant Docket Entries in the U.S. District Court for the Northern District of Ohio, Case No. 3:00-cv-07247, *Cuno, et al. v. DaimlerChrysler, Inc., et al.*

Date Filed	#	Docket Text
04/20/2000	1	Notice of Removal *with jury demand.* filed by Truman A. Greenwood, Barbara E. Herring, John T Landwehr, Theodore M Rowen of Spengler Nathanson P.L.L. on behalf of DaimlerChrysler, Inc., Joseph T. Deters, Carleton S. Finkbeiner, Terry L. Glazer, David Hunter, C. Lee Johnson, State of Ohio, Toledo Public School District, Toledo, City of, Washington Local School District, Thomas M. Zaino. Filing fee collected, receipt #309015. (Attachments: # 1) (N, D) (Entered: 07/11/2000)
		* * *
05/11/2000	6	Removal Order: US District Court assumes jurisdiction of Case No. CIO2000002084 from Lucas County Common Pleas Court. (N, D) (Entered: 07/12/2000)
		* * *
06/12/2000	18	Supplemental Motion to remand case *to state court or alternatively for abstention and remand* filed by Peter D. Enrich, Terry J. Lodge of Northeastern University School of Law on behalf of all plaintiffs. (N, D) (Entered: 07/12/2000)

Date Filed	#	Docket Text
		* * *
07/17/2000	30	Opposition to *Plaintiffs' Motion to Remand* filed by John T Landwehr of Eastman & Smith on behalf of DaimlerChrysler, Inc., City of Toledo, Carlton Finkbeiner, Toledo Public School District, Terry L. Glazer, Washington School District & David Hunter. (Related motion(s) 12, 18) (Other related filing(s) 18, 12) (Landwehr, John) Modified on 7/17/2000 (H, D). (Entered: 07/17/2000)
07/17/2000	31	Opposition to plaintiffs' motion to remand filed by Sharon A. Jennings of Office Of The Attorney General on behalf of Joseph T. Deters, C. Lee Johnson, State of Ohio, Thomas M. Zaino. (Related motion(s) 18) (Jennings, Sharon) Modified on 7/18/2000 (N, D). (Entered: 07/17/2000)
		* * *
08/01/2000	35	Reply *in Support of Supplemental Motion to Remand* filed by Terry J. Lodge on behalf of all plaintiffs. (Related motion(s) 12, 18) (Other related filing(s) 31, 30) (Lodge, Terry) (Entered: 08/01/2000)
		* * *

Date Filed	#	Docket Text
08/09/2000	36	Motion for leave to file *Defendants' Surreply Memorandum in Opposition to Plaintiffs' Motion for Remand* (related document(s)18, 12) filed by Robert J. Gilmer Jr., Truman A. Greenwood, Barbara E. Herring, Sharon A. Jennings, Erika Z. Jones, Miriam R. Nemetz, Samuel J. Nugent, Charles A. Rothfeld, Theodore M Rowen, John T Landwehr of Eastman & Smith on behalf of all defendants. (Attachments: # 1 Proposed Order # 2 Surreply Memorandum in Opposition to Plaintiffs' Motion to Remand # 3 Memorandum in Support of Motion for Leave) (Landwehr, John) (Entered: 08/09/2000)
08/15/2000	37	Order Granting Motion for leave to file surreply. (Related Doc # 36) (Katz, David) (Entered: 08/15/2000)
08/15/2000	38	Sur-Reply memorandum in *opposition* to Plaintiffs' motion for remand filed by John T Landwehr of Eastman & Smith on behalf of all defendants. (Related motion(s) 12, 18) (Katz, David) (Entered: 08/15/2000)
		* * *
11/20/2000	44	Memorandum Opinion denying motion to remand case (Related Doc #18), denying motion to remand case (Related Doc # 12), granting Motion to amend complaint. (Related Doc # 25) (Katz, David) (Entered: 11/20/2000)